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Washington, D.C. 20554

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In the Matter of)
)
Local Competition and Broadband Reporting) CC Docket No. 99-301

COMMENTS OF COVAD COMMUNICATIONS COMPANY

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1. Introduction

Covad Communications Company, by its attorney, hereby files its comments on the Notice of Proposed Rulemaking in the proceeding relating to local competition and broadband reporting (*Local Competition and Broadband Reporting*, Notice of Proposed Rulemaking, CC Docket No. 99-301, FCC 01-19 (rel. Jan. 19, 2001) (NPRM)). Covad is the leading national broadband provider of high-speed Internet and network access utilizing Digital Subscriber Line (DSL) technology. Covad services are currently available across the United States in 109 of the top Metropolitan Statistical Areas. Covad's network currently covers more than 40 million homes and businesses and reaches approximately 40 to 45 percent of all US homes and businesses. Covad herein submits its comments on the NPRM to refine the local competition report.

As a general matter, while Covad applauds the Commission's desire to refine the report, it urges the Commission not to modify it in ways that will make reporting requirements more burdensome for CLECs and cause them to spend time reporting that could better be spent operating their businesses. CLECs are lean, highly competitive entities, whose personnel must be geared toward operations, not toward compiling reports. By increasing the reporting requirements on competitive LECs, the Commission risks imposing regulatory burdens that such carriers, in this time of crisis in the CLEC industry, can ill afford.

2. Reporting Thresholds

The Commission has sought comments on whether it should lower or eliminate the reporting threshold for broadband reporting. The Commission is concerned that the

current threshold may have prevented the collection of sufficient data on broadband service in rural and sparsely populated areas. Covad believes that the reporting threshold should be lowered. The effort to capture the data is the same regardless of the threshold, and the additional data, cumulatively for all ILECs and CLECs, could present a clearer and more accurate snapshot of broadband competition. Covad would prefer that the threshold be lowered, rather than relying on voluntary filings by providers below the current reporting threshold. A lowered threshold, required of all filers, would present a less distorted picture of the broadband world than would a voluntary disclosure by some filers. However, the Commission should be aware that lowering the threshold may only reinforce its expectation that subscribership is limited to a small percentage of the overall population, since it makes little business sense to make service available without the commercial scale to make such service profitable.

2. Data to be Reported

The Commission has proposed revisions that might give it additional insights into the deployment of broadband services and their availability, specifically distinctions between residential and business users, reporting of subscribership by zip code, and availability of services which are not actually being provided. Following are Covad's comments on these three issues.

A. Categories of Users

The Commission asks whether it should alter Form 477 so that it more precisely captures distinctions between the deployment of broadband services to residential and business users (NPRM para. 17). It proposes to require providers to report estimates for three categories of users – 1) residential, 2) small business, and 3) large business and

institutional users – instead of the current two classes of 1) residential and small business users and 2) large business and institutional users. Covad strongly urges the Commission not to adopt its proposal to report on three categories of users. While Covad is able to differentiate between residential and business users, since we offer different categories of service for each of those user categories, we cannot break down the categories any further. A residential user might well also be a small business, and Covad would have no way of discerning that. In addition, there are many small businesses and home businesses that access the upper spectrum of our residential service. These are distinctions which we do not capture in our records, and thus would be unable to report. The same problem appears if we are asked to report the number of full-two-way lines that are in service to the categories of residential users, small businesses, and large businesses. While we are able to capture data relating to whether users are subscribing to full, two-way broadband or to one-way broadband, we do not know precisely what sort of customer is doing so. While Covad agrees with the general proposition that more finely granulated information is valuable, the Commission should not require that companies provide information which is not normally captured in the course of their business operations. Requiring Covad and other competitive LECs to capture such data would impose a regulatory cost for the constructive of new systems, hiring and training of new staff, and collection of data that would far outweigh the small benefit of such granularity. As such, Covad opposes imposition of such requirements.

B. Additional Information at the Zip Code Level

The Commission has asked whether providers should report the actual subscribership by zip code, in lieu of the current requirement that providers report a list of zip codes

where broadband service is being provided. The Commission is concerned that simply reporting by zip code may not give an adequate level of granularity on the extent of deployment or types of customers within any given zip code (NPRM at para. 18). Covad again reiterates its position that the Commission should take care not to over-refine the report to the point where reporting becomes burdensome for CLECs. The Commission's proposal to report additional information at the zip code level begins to reach that point. While Covad is able to provide subscribership by zip code, any attempt to capture finer granulation would tie up scarce company resources in reporting which would be better spent in operating its business. Covad believes this is a universal CLEC consideration. Finally, although the Commission has not proposed the filing of separate reports for each category, Covad wishes to state strongly that if such reports are under consideration, they would impose a doubling or tripling of the current reporting burden, and would be unacceptable.

C. Availability of Services

The Commission has tentatively concluded that it should require providers to report data on the *availability* of their services, in addition to data on actual subscribership (NPRM para. 20). The Commission suggests that while subscribership measures the number of customers who have chosen to purchase services available to them, availability reflects a supplier's capability and willingness to provide service in a given area and within a specified period of time.

Covad disagrees that data on *availability* of service will help the Commission gain a more clear understanding of the provision of broadband services. We have few, if any, facilities in central offices where there are no customers, since it would make no

economic sense to have them. In fact, Covad has recently closed a number of central office collocation arrangements. To mandate that companies provide such information, if any such availability indeed exists, would make extra work for that company and not provide the Commission any more useful information.

Additionally, Covad believes that the measure of number of homes passed by broadband-capable infrastructure is a false measure of availability of service as opposed to the actual provision of service to a particular home. That is, all homes passed by do not necessarily qualify for service. A residence might be more than three miles from a central office, or poor ILEC infrastructure might disqualify a residence from service, as would ILEC electronics on the line. As for measuring zip codes where service is currently offered, or zip codes where service is currently offered to a majority or some other percentage of customers in that zip code, that would essentially be the same data that is currently reported.

4. Confidentiality Issues

The Commission seeks comment on whether it should establish a rebuttable presumption that some or all of the data in Form 477 does not typically meet its standards for competitively-sensitive information. The position is in contrast to the Commission's current policy of affording filers as much confidentiality as they deem necessary to protect their business interests. The Commission considered this issue in its first Notice of Proposed Rulemaking and yielded properly to those commenters who argued that confidential treatment of competitive business information must be respected. Covad strongly urges the Commission to make no changes in its current confidential treatment of data reported on Form 477. Any changes in the treatment of confidential company

information would nullify any support for providing the more specific information the Commission is seeking. For example, while Covad supports removing the minimum-lines threshold for broadband reporting, it would not support that position if the Commission would not guarantee the confidentiality of its data. In Covad's case, newly opened central offices, very small in number, can be the opening of a test or new market. This market information must remain confidential, so that competitors cannot anticipate a company's moves.

Likewise, to require separate reporting of residential broadband services from small business broadband services would provide specific data on business/consumer breakdowns by central office. This information could be used as a target by a competitor in order to attempt to sweep out the more profitable areas of a company's business. No company would be comfortable providing such data if confidentiality cannot be guaranteed.

Finally, for all the above reasons, any increased granularity in subscribership information by zip code makes confidentiality even more important.

The Department of Justice has already commented that it does not believe the identity of the companies who file Form 477 for a particular state is competitively sensitive or otherwise properly exempt from disclosure. Covad agrees. It has no objection to having its name associated with providing service in a particular state, or even to sharing its confidential information with the Department, as long as it may do so with the usual non-disclosure safeguards.

5. Frequency of Filing

Current Commission rules provide for filing Form 477 semi-annually. The Commission seeks comments on whether it should alter the filing frequency. Covad believes that the current twice-a-year filing is enough to provide the Commission with timely information and not overburden CLECs with onerous reporting requirements that, again, would tie up scarce company resources. Covad also believes that Commission staff would be strained by having to analyze reports filed more than twice a year, and would achieve little better understanding of the current state of broadband services than it has now. Therefore, we do not support more frequent reporting.

6. Other Issues

In order to gain the additional insights into the deployment of broadband services which the Commission seeks, Covad believes that the Bell Operating Companies and other incumbent LECs should be required to report on their performance with wholesale metrics. For example, the Commission should require incumbent LECs to report on the rate at which they fulfilled wholesale broadband orders (such as from Covad) compared to the rate at which they fulfilled their own retail broadband orders. The Commission could require incumbent LECs to report, for example, the average time it took them to provision unbundled local loops to a requesting CLEC, compared with the time it took to turn up service to that incumbent LECs' own retail customers. The Commission then would have insight into the most important competitive question of broadband deployment: are incumbent LECs delaying competitive LEC deployment of broadband services by delaying in the provision of wholesale services. If they are, the Commission cannot fulfill its statutory mandate to encourage widespread deployment of advanced services without taking concrete steps to remedy that discriminatory treatment.

7. Conclusion

Subject to the comments set forth above, Covad supports the Commission's efforts to improve the local competition report.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink that reads "Jason D. Oxman". The signature is written in a cursive, slightly slanted style.

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